

disclosures and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(ii) From subsection (e)(1) because in the collection of information for investigatory purpose, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. It is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

[64 FR 49660, Sept. 14, 1999, as amended at 70 FR 38009, July 1, 2005]

§ 321.14 DSS implementation policies.

(a) *General.* The implementation of the Privacy Act of 1974 within DSS is as prescribed by DoD Directive 5400.11. This section provides special rules and information that extend or amplify DoD policies with respect to matters of particular concern to the Defense Security Service.

(b) *Privacy Act rules application.* Any request which cites neither Act, concerning personal record information in a system or records, by the individual to whom such information pertains, for access, amendment, correction, accounting of disclosures, etc., will be governed by the Privacy Act of 1974, DoD Directive 5400.11 and these rules exclusively. Requests for like information which cite only the Freedom of Information Act will be governed by the Freedom of Information Act, DoD Reg-

ulation 5400.7R². Any denial or exemption of all or part of a record from notification, access, disclosure, amendment or other provision, will also be processed under these rules, unless court order or other competent authority directs otherwise.

(c) *First amendment rights.* No DSS official or element may maintain any information pertaining to the exercise by an individual of his rights under the First Amendment without the permission of that individual unless such collection is specifically authorized by statute or necessary to and within the scope of an authorized law enforcement activity.

(d) *Standards of accuracy and validation of records.* (1) All individuals or elements within DSS which create or maintain records pertaining to individuals will insure that they are reasonably accurate, relevant, timely and complete to serve the purpose for which they are maintained and to assure fairness to the individual to whom they pertain. Information that is not pertinent to a stated purpose of a system of records will not be maintained within those records. Officials compiling investigatory records will make every reasonable effort to assure that only reports that are impartial, clear, accurate, complete, fair and relevant with respect to the authorized purpose of such records are included, and that reports not meeting these standards or serving such purposes are not included in such records.

(2) Prior to dissemination to an individual or agency outside DoD of any record about an individual (except for a Freedom of Information Act action or access by a subject individual under these rules) the disclosing DSS official will by review, make a reasonable effort to assure that such record is accurate, complete, timely, fair and relevant to the purpose for which they are maintained.

(e) *The Defense Clearance and Investigations Index (DCII).* It is the policy of DSS, as custodian, that each DoD component or element that has direct access to or contributes records to the DCII (V5-02), is individually responsible for compliance with the Privacy Act of

²See footnote 1 to 321.1.

1974 and DoD Directive 5400.11 with respect to requests for notification, requests for access by subject individuals, granting of such access, request for amendment and corrections by subjects, making amendments or corrections, other disclosures, accounting for disclosures and the exercise of exemptions, insofar as they pertain to any record placed in the DCII by that component or element. Any component or element of the DoD that makes a disclosure of any record whatsoever to an individual or agency outside the DoD, from the DCII, is individually responsible to maintain an accounting of that disclosure as prescribed by the Privacy Act of 1974 and DoD Directive 5400.11 and to notify the element placing the record in the DCII of the disclosure. Use of and compliance with the procedures of the DCII Disclosure Accounting System will meet these requirements. Any component or element of DoD with access to the DCII that, in response to a request concerning an individual, discovers a record pertaining to that individual placed in the DCII by another component or element, may refer the requester to the DoD component that placed the record into the DCII without making an accounting of such referral, although it involves the divulging of the existence of that record. Generally, consultation with, and referral to, the component or element placing a record in the DCII should be effected by any component receiving a request pertaining to that record to insure appropriate exercise of amendment or exemption procedures.

(f) *Investigative operations.* (1) DSS agents must be thoroughly familiar with and understand these rules and the authorities, purposes and routine uses of DSS investigative records, and be prepared to explain them and the effect of refusing information to all sources of investigative information, including subjects, during interview, in response to questions that go beyond the required printed and oral notices. Agents shall be guided by DSS Handbook for Personnel Security Investigations in this respect.

(2) All sources may be advised that the subject of an investigative record may be given access to it, but that the identities of sources may be withheld

under certain conditions. Such advisement will be made as prescribed in DSS Handbook for Personnel Security Investigations, and the interviewing agent may not urge a source to request a grant of confidentiality. Such pledges of confidence will be given sparingly and then only when required to obtain information relevant and necessary to the stated purpose of the investigative information being collected.

(g) *Non-system information on individuals.* The following information is not considered part of personal records systems reportable under the Privacy Act of 1974 and may be maintained by DSS members for ready identification, contact, and property control purposes only. If at any time the information described in this paragraph is to be used for other than these purposes, that information must become part of a reported, authorized record system. No other information concerning individuals except that described in the records systems notice and this paragraph may be maintained within DSS.

(1) Identification information at doorways, building directories, desks, lockers, name tags, etc.

(2) Identification in telephone directories, locator cards and rosters.

(3) Geographical or agency contact cards.

(4) Property receipts and control logs for building passes, credentials, vehicles, weapons, etc.

(5) Temporary personal working notes kept solely by and at the initiative of individual members of DSS to facilitate their duties.

(h) *Notification of prior recipients.* Whenever a decision is made to amend a record, or a statement contesting a DSS decision not to amend a record is received from the subject individual, prior recipients of the record identified in disclosure accountings will be notified to the extent possible. In some cases, prior recipients cannot be located due to reorganization or deactivations. In these cases, the personnel security element of the receiving Defense Component will be sent the notification or statement for appropriate action.

(i) *Ownership of DSS Investigative Records.* Personnel security investigative reports shall not be retained by

DoD recipient organizations. Such reports are considered to be the property of the investigating organization and are on loan to the recipient organization for the purpose for which requested. All copies of such reports shall be destroyed within 120 days after the completion of the final personnel security determination and the completion of all personnel action necessary to implement the determination. Reports that are required for longer periods may be retained only with the specific written approval of the investigative organization.

(j) *Consultation and referral.* DSS system of records may contain records originated by other components or agencies which may have claimed exemptions for them under the Privacy Act of 1974. When any action that may be exempted is initiated concerning such a record, consultation with the originating agency or component will be effected. Where appropriate such records will be referred to the originating component or agency for approval or disapproval of the action.

PART 322—NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICES PRIVACY ACT PROGRAM

Sec.

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AUTHORITY: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

SOURCE: 68 FR 28757, May 27, 2003, unless otherwise noted.

§ 322.1 Purpose and applicability.

(a) This part implements the Privacy Act of 1974 (5 U.S.C. 552a), as amended and the Department of Defense Privacy Program (32 CFR part 310) within the National Security Agency/Central Security Service (NSA/CSS); establishes policy for the collection and disclosure of personal information about individuals; assigns responsibilities and establishes procedures for collecting personal information and responding to

first party requests for access to records, amendments of those records, or an accounting of disclosures.

(b) This part applies to all NSA/CSS elements, field activities and personnel and governs the release or denial of any information under the terms of the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

§ 322.2 Definitions.

Access. The review of a record or a copy of a record or parts thereof in a system of records by an individual.

Confidential source. A person or organization who has furnished information to the federal government under an express promise that the person's or the organization's identity will be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

Disclosure. The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review) to any person, private entity, or government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

Employees of NSA/CSS. Individuals employed by, assigned or detailed to the NSA/CSS. This part also applies to NSA/CSS contractor personnel who administer NSA/CSS systems of records that are subject to the Privacy Act.

FOIA Request. A written request for NSA/CSS records, made by any person, that either explicitly or implicitly invokes the Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended. FOIA requests will be accepted by U.S. mail or its equivalent, facsimile, or the Internet, or employees of NSA/CSS may hand deliver them.

Individual. A living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. The parent of a minor or the legal guardian of any individual also may act on behalf of an individual. Corporations, partnerships sole proprietorships, professional groups, businesses, whether incorporated or unincorporated, and other commercial entities are not individuals.